

Item 7
HW/FUL/18/00553
Unit 1A Queensgate, Harlow

Correspondence:

1. A member of the public has written neither objecting to nor supporting the application. Nonetheless they raise that a budget food store will help people in the locality but that traffic is appalling, dangerous at the roundabout. They suggest that drivers behave recklessly and that an additional vehicle access should be provided to Queensgate, in part so pedestrian traffic is safer.

Officer response:

The proposal is not for a change of Use Class and the traffic associated with the proposal is not indicated to result in any overflow of the existing shared parking area. The provision of additional exits onto Edinburgh Way or traffic lights not directly associated with this development. Officers consider it would be unduly onerous on a single unit within the Queensgate retail park.

2. The applicants have written raising a policy issue in relation to the Committee report as follows:

Re Policy IN1-The Crown Estate commenced a phased review of its retail assets for EV charging a few years ago. With specific regards Queensgate I can advise as follows:

- A twin EV Charging Point unit, spanning 2 car parking spaces, was installed approximately 18 months ago. The location is detailed as 'pod point' between Pizza Hut and EE on the image below. I have also included below an photo of the charger in use.*
- The new substation installed opposite Smyths Toys was specifically designed to allow for the installation of EV charging points over time should a requirement arise.*
- If the Council consider that the proposed development would justify further EV provision at the Park, in principle, The Crown Estate and Lidl are prepared to consider the introduction of 2 X EV Charging Points and to install the ducting for additional spaces to "future proof" should a requirement arise. If this is the Council's preference, perhaps we can discuss? My immediate thought is that we would be looking to convert some of the proposed Parent and Child spaces to EV charging given the latter are typically larger than normal car parking spaces/more akin to Parent and Child spaces. Alternatively, we could look to expand the number alongside the existing EV Charging point above given this has become/is becoming an established focus for such activity.*

Re Policy IN4-as you rightly point out, this policy relates to major developments and is arguably not relevant to our application. However, I can confirm that the proposed unit for LIDL is being provided with 2no ducts connected to the telecoms network; one for copper and the other for fibre so that it is enabled for "high quality communications" infrastructure.

Officer Response:

The provision of electric charging points is welcomed in line with Policy IN1 of HLDP (Dec 2020). A condition is proposed as Condition 4 to require the implementation and retention of EV Charging points.

In relation to Policy IN4, while this proposal is not for a change of use but a relaxation in a previous restriction of the A1 Use, the scale of the building involved is major and it is welcomed that consideration has been given to the retro-fitting of enabling infrastructure in relation to broadband coverage of the District.

3. Correspondence has been received that an objection on behalf of ASDA has not been summarised in the Committee Report

Officer Comment:

Officers apologise that an objection has been inadvertently missed from the Comments Section and suggest the following summarised comment amendment to Summary of Representations Received section in the committee report:

“An objection has been received on behalf of Asda objecting to the proposal on the grounds that “LAD” discounters have changed over time and are more like a traditional supermarket such that the differentiation is now marginal and should be considered simply as a food supermarket rather than a special type, in particular as the unit could be occupied by any food retailer rather than just Lidl in future. As such, sensitivity tests should be undertaken using other retailers’ densities or an average to give a clear indication of potential impact on protected retail in retail centres; given that the Council’s Retail experts have raised a concern re sequential test, a further assessment is needed; the proposal would not be in accordance with Policy RTS19/PR10 relating to retail warehouse parks being restricted to bulky goods and the original restrictive condition should stand; an impact test should be tested and if the scheme fails, it should be refused. Asda are concerned that the proposal could have a significant impact on the Town Centre”.

4. A further comment has been received in relation to the Officer Report from a representative on behalf of Tesco as follows:

“On behalf of our client, Tesco Stores Limited, we have to make a further objection which arises from the content of the officer’s Report to Committee and its failure to have proper regard to the content of the Council’s expert advisor on retail impact matters.

Your advisor, LSH, explained in their advice dated 25th November 2020 that:

“... there is no threshold to what constitutes ‘significant adverse impact’, which will be influenced on how vulnerable a town centre will be to further trade diversion. Given Harlow Town Centre’s role as the principal shopping location for the District there is a greater onus to provide a robust health check assessment; particularly as the town centre will be subject to higher levels of trade diversion (ranging between 18% to 23%) than other assessed centres in the catchment”.

“We therefore conclude that the application fails the impact test on the basis that the applicant has failed to fully assess impact on investment in line with paragraph 89a of the NPPF or provide an up-to-date health check to inform impact on the vitality and viability of Harlow Town Centre in line with paragraph 89b of the NPPF. For the health check evidence in particular, this is required to interpret the economic impact of the proposal on the town centre’s turnover. Without further evidence to support their impact case we recommend that planning permission is refused”.

Whilst LSH mistakenly advised that the decision-taker could weigh that advice on ‘significant adverse impact’ against any wider benefits, the nature of the policy in the NPPF – which is now reflected in your adopted Local Plan – is that “Where an application... is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused”. Thus, it is not a question of applying a balance, or as the officer’s Report suggests that “The significance of any harm

identified has to be considered in relation to any other material consideration” rather the policy expressly requires refusal.

Furthermore, the conclusion in the officer’s Report that your expert’s assessment that “the harm would be less than indicated in the (applicant’s) RIA, such that it may no longer be significant”, is wholly at odds with the actual findings set out in detail in LSH’s November advice and which nowhere suggests that impact on the town centre “would be relatively small”.

Bearing in mind the officer’s Report has already been circulated to members of the Committee I would ask that the content of this communication be provided as a matter of urgency to those members in order to assist the Council in making a safe decision.”

Officer Comments:

- a) In relation to consideration of material considerations, while it is recognised that in policy terms the proposal would result in some harm to trade within Harlow Town Centre which would suggest that the scheme might be refused, policy is only one part of the requirement when determining applications. The National Planning Guidance under the title “Determining a planning application” states “*the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise*” (s70(2) TCPA 1990 and s38(6) Planning and Compulsory Purchase Act 2004), and that the NPPF itself is “*a material consideration which must be taken into account*”. The guidance concludes that “*If decision takers choose not to follow the NPPF, where it is a material consideration, clear and convincing reasons for doing so are needed.*” Policy PR1 and PR10 of the Harlow LDP accord with the NPPF in relation to retail policy. It is nonetheless wholly within the Council’s remit to consider whether if in policy terms a scheme might normally be refused to consider whether there are any other material circumstances which indicate otherwise. Members have been advised that harm has been identified in Policy terms but may take into account any material circumstances. The NPPF reminds at paragraph 14 that there is a presumption in favour of development.
- b) The representative for Tesco’s is correct that the Council’s retail expert’s written report does not contain specific mention of the scale of the harm, nonetheless subsequent discussion with Officers identified that the harm identified by the applicants in their RIA was based on slightly out of date information and that the actual picture was that the harm would be lower and, could possibly be, none. However, the representative is correct that the written report does not contain this wording and this should be clarified.

Amend first paragraph under title “**Planning Balance**” to delete final sentence and insert :

“In subsequent discussions with Council Officers the Retail Expert indicated that the harm was likely to be less than indicated in the RIA as the base information submitted was somewhat out of date and that the situation would therefore be less onerous than as indicated in the RIA. There is sufficient information provided by the applicant to identify that in actual terms there would be trade diversion which would be considered harmful in policy terms.”

Report Conclusion:

It has been raised that the conclusion is unclear as to which policy the application is compliant with.

Officer response:

For clarification purposes, the paragraph as follows applies solely to the sequential test being met:

“It is considered that the Sequential Test (that there is no other location currently available) is met. As such, the proposal meets the requirements of Policy RP5 and point a) of Policy PR10 of the HLP (Dec. 2020)”

It does not specifically indicate that other parts of Policy PR5 are met, however, for the purposes of clarification, it is only part a) of Policy PR5 (typo correction) that is met by the submitted Sequential Test, as revised.

Policy PR5's criteria are as follows:

- (a) the sequential approach is satisfied;
- (b) an active frontage is achieved at the ground floor;
- (c) the vitality and viability of the retail centre is preserved and enhanced to provide facilities and services for local residents; and
- (d) it is well related to public transport facilities, or is located where appropriate provision for sustainable transport can be provided.

In line with the Retail Expert's Review, the trade diversion indicated in the applicant's Retail Impact Assessment, as revised does not meet criteria c) of Policy PR5. However, see comment above relating to subsequent discussion that the figures submitted, by retail market standards, are somewhat out of date and that the situation would be less harmful than indicated. Notwithstanding, Officers consider that the benefits provided by the scheme compared with the trade diversion from other existing stores (the harm) in the District is such that the material circumstances are of sufficient weight that our recommendation is to grant the scheme on this basis. In addition the trade diversion figures relate to 2023 in barely 2 years time and there is expected to be a significant increase in catchment area population within the plan period in the Harlow and Gilston Garden Town (particularly to the north of the District) such that existing food stores are likely to benefit.

Amend second paragraph under "Conclusions to read:

“It is considered that the Sequential Test (that there is no other location currently available) is met. As such the proposal meets the requirement of Policy PR5 a) and point a) of Policy PR10 of the HLDP (December 2020).”

5. A further objection has been received from a representative of Aldi who has also written to indicate that they consider that the report does not reflect the true picture and that the loss of their trade will be significantly greater than indicated, in part as their store is located only 1km from the application site and is at The Stow Neighbourhood Centre where it provides an "anchor store" within the centre. They consider that the recommendation is based on information that is not sufficiently robust such that the scheme should be refused on policy grounds in line with the NPPF. Also that the sequential test should not solely relate to the availability of Unit 24 (former BHS) in the town centre such that the sequential test has not been robustly met.

Officer response:

The recently adopted HLDP (Dec 2020) does not include the Aldi store within the neighbourhood centre, albeit that it lies adjacent to it, it is itself an out of centre development. The proposal would result in trade diversion from this store which is indicated in both the applicants and the Council's retail expert's comments, this would result in harm

to existing stores based on retail impact. This is clarified in the response above, however the harm is considered by Officers to be part of the consideration and the benefits are considered to be material considerations which otherwise result in a positive recommendation of the scheme.

In relation to the sequential test, the applicants submitted further information regarding any other sites being available in the town centre. Officers agree that there are no other sites currently available which meet the requirements of the sequential test.